



Security Council

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Letter dated 13 March 2013 from the Chair of the Informal Working Group on International Tribunals addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Informal Working Group on International Tribunals containing an account of the Group's activities from 1 January to 31 December 2012 (see annex).

I would appreciate it if the present letter and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(Signed) Gert Rosenthal
Chairman

Informal Working Group on International Tribunals



Annex

Report of the Informal Working Group on International Tribunals for 2012

I. Introduction

1. This report is to inform the Security Council about the work of the Informal Working Group on International Tribunals during the period from 1 January to 31 December 2012.

II. Organizational matters

2. The Working Group was established on an informal basis in 2000 to consider matters relating to the United Nations and United Nations-assisted tribunals, particularly the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Working Group consists of the legal advisers of the missions of the members of the Security Council and is assisted by the Office of Legal Affairs and the Security Council Affairs Division of the Department of Political Affairs.

3. Until 2007, its chairmanship rotated with the monthly rotation of the presidency of the Council and it met only on an ad hoc basis. At the end of 2007, given the intensive work relating to residual issues and the completion strategies of the Tribunals pursuant to resolutions 1503 (2003) and 1534 (2004), the Working Group decided to appoint a single Chair and started meeting on a regular basis. In 2008 the Chairmanship was held by Belgium. In 2009 and 2010 Austria was the Chair, followed by Portugal in 2011. In 2012 Guatemala had the honour of chairing the Working Group.

4. During the reporting period the Working Group continued to meet regularly and held seven meetings, including with the Presidents and Prosecutors of the two Tribunals when in New York for their presentations to the Security Council. The members of the Working Group also had informal exchanges of views on and negotiations of four Security Council resolutions concerning the Tribunals adopted in 2012.

5. In November 2012 the Working Group also discussed matters relating to the Special Court for Sierra Leone and the Residual Special Court for Sierra Leone.

III. Security Council briefings

6. Following previous practice, the Permanent Representative of Guatemala, in his capacity as Chair, regularly briefed the Security Council on the progress of the Working Group as part of his statements at the biannual public meetings of the Security Council on the completion strategies of the two Tribunals, on 7 June (6782nd meeting) and 5 December 2012 (6880th meeting).

7. On 6 June the Working Group held an exchange of views with the Presidents and the Prosecutors of the two Tribunals on the work of the Tribunals and their completion strategies (see S/2012/349 and S/2012/354) in preparation for the

Tribunals' periodic briefing to the Security Council on 7 June. The Working Group started by congratulating President Theodor Meron and Prosecutor Hassan B. Jallow on their double-hatted appointments to the Mechanism starting from 1 March although it began operating officially on 1 July 2012 (International Tribunal for Rwanda division). The Working Group also congratulated Judge Vagn Joensen on becoming the President of the International Criminal Tribunal for Rwanda starting from 2 March 2012. The Working Group received an update both on progress towards completion of cases and on transition to the Residual Mechanism. The Prosecutor, Serge Brammertz, updated the Working Group on the three major trials (Karadžić, Mladić and Hadžić) and projections for the timelines. An update was received from Prosecutor Jallow on the nine remaining fugitives from the International Criminal Tribunal for Rwanda.

8. On 4 December, in preparation for the periodic briefing to the Security Council on 5 December, the Working Group held another exchange of views with the Presidents and the Prosecutors of the two Tribunals on the work of the Tribunals and their activities (see S/2012/836 and S/2012/847). The exchange also covered the work and activities of the Arusha branch of the Residual Mechanism (see S/2012/849), which had started operating on 1 July 2012. Following the exchange of views the experts negotiated draft resolutions on the extension of the terms of office of judges of the two Tribunals based on letters from the President of the International Tribunal for the Former Yugoslavia (see S/2012/845) and the President of the International Criminal Tribunal for Rwanda (see S/2012/893).

IV. The preparation of the Working Group for the commencement of the functioning of the Residual Mechanism

9. By resolution 1966 (2010), the Security Council, acting under Chapter VII of the Charter, decided to establish the International Residual Mechanism for Criminal Tribunals with two branches, one for each of the two Tribunals, which should commence functioning on 1 July 2012 and 1 July 2013, respectively. The Tribunals' archives will be co-located with the respective branches of the Mechanism. The Council also requested the Tribunals to take all possible measures to expeditiously complete all their remaining work no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the Mechanism. It further decided that the Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the Tribunals, as well as all the contracts and international agreements concluded by the United Nations in relation to them. The Mechanism will operate for an initial period of four years, will be reviewed by the Council before the end of that initial period and every two years thereafter, and will continue to operate for subsequent periods of two years following each review, unless the Council decides otherwise.

10. The preparation for the commencement of the functioning of the Mechanism started towards the end of 2011. The General Assembly elected the 25 judges for the Mechanism on 16 and 20 December 2011 and adopted the budget for the biennium 2012-2013 for the Tribunals and the Mechanism on 24 December 2011. On 10 January 2012, the Secretary-General appointed Mr. John Hocking as Registrar of the Mechanism.

11. On 20 January 2012 the Working Group held a meeting at which it was informed about progress towards the commencement of the functioning of the Arusha branch of the Mechanism. In addition, the Working Group considered the appointments of the senior officials of the Mechanism, namely the President and the Prosecutor. The President is appointed from among the judges of the Mechanism by the Secretary-General after consultations with the President of the Security Council and the judges. The Prosecutor is appointed by the Security Council on the nomination of the Secretary-General.

12. On 30 March the Working Group met to consider the letter dated 20 January 2012 from the Presidents of the two Tribunals addressing the comments made by some delegations on the Rules of Procedure and Evidence of the Mechanism. To that effect a second round of inputs was submitted to the President and judges of the Mechanism. The Rules of Procedure and Evidence were adopted by the judges in advance of the start of the operations of the Arusha branch of the Mechanism on 1 July 2012.

13. On 30 April the Working Group met to consider a request by the President of the Mechanism and the President of the International Criminal Tribunal for Rwanda that the possible appeals in three cases before that Tribunal should be heard by the Appeals Chamber of the International Criminal Tribunal for Rwanda and not the Appeals Chamber of the Mechanism. Additional information to consider a course of action was requested by the Working Group. In addition the Working Group was briefed by the Office of Legal Affairs on the status of the draft Secretary-General's bulletin on information security and the access regime for the archives of the Tribunals and the Mechanism.

14. The Working Group also met to consider a letter dated 23 May 2012 (see S/2012/392) concerning the request for extension of the term of office of judges of the International Criminal Tribunal for Rwanda. Following the discussions in the Working Group, the Security Council, by resolution 2054 (2012), extended the terms of office of three trial judges until 31 December 2012 or the completion of the Ndirabatswe case, whichever was sooner. By the same resolution the term of office of Judge Vagn Joensen (Denmark) was extended until 31 December 2014 so that he may continue to perform the functions required of him as trial judge and President of the Tribunal, to complete the work of the Tribunal. The Security Council undertook to review the latter extension in June 2013.

15. The Secretary-General's bulletin on International Criminal Tribunals: information sensitivity, classification, handling and access (ST/SGB/2012/3) was issued on 20 July 2012. The Secretary-General's bulletin aims at ensuring the classification, secure handling and provision of authorized access to the records and information entrusted to or originating from the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Mechanism.

16. On 19 October the Security Council received a letter (see S/2012/779) through the Secretary-General from the East African Community concerning the hosting in Rwanda of the archives of the International Criminal Tribunal for Rwanda. After consideration of the letter the Working Group decided not to discuss this matter since the location of the branches of the Residual Mechanism and the archives had already been fully considered by the Working Group when negotiating resolution 1666 (2010). At that moment the discussions were based on the Secretary-General's

report on the administrative and budgetary aspects of the options for possible locations for the archives of the Tribunals and the seat of the Residual Mechanism(s) (S/2009/258) and two subsequent informal reports of the Office of Legal Affairs to the Working Group on potential locations. The views of the affected countries and potential host countries were taken into account fully during the negotiations.

V. Security Council decisions relating to the Residual Mechanism

17. On 29 February the Secretary-General decided to appoint Judge Theodor Meron (United States of America) as President of the International Residual Mechanism for Criminal Tribunals, for a term of four years effective 1 March 2012. The selection and appointment process was in accordance with article 11, paragraph 1, of the statute of the Mechanism contained in annex 1 to resolution 1966 (2010). The decision was made after consulting the President of the Security Council and the judges of the Mechanism. Judge Meron continues to serve as President of the International Tribunal for the Former Yugoslavia in accordance with article 7 of annex 2 to resolution 1966 (2010), which permits double-hatting of senior officials and staff of the Mechanism.

18. The Security Council, on the nomination of the Secretary-General, appointed Mr. Hassan B. Jallow (Gambia) as Prosecutor of the Mechanism by resolution 2038 (2012) of 29 February 2012. The nomination process was in accordance with article 14 of the statute of the Mechanism contained in annex 1 to resolution 1966 (2010). The appointment, effective 1 March 2012, is for a term of four years. Mr. Jallow continues to serve simultaneously as Prosecutor of the International Criminal Tribunal for Rwanda in accordance with article 7 of annex 2 to resolution 1966 (2010).

19. On 5 July the Security Council welcomed the start of work at the Arusha branch of the Mechanism, emphasizing its importance in ensuring that there is no impunity for those responsible for serious crimes committed in Rwanda and in the former Yugoslavia in the 1990s. In a press statement issued on the same day, the Council members stressed that the Mechanism's establishment was essential to ensure that the closure of the Tribunals did not leave the door open to impunity for the remaining fugitives and for those whose trials or appeals have not been completed.

20. By resolution 2054 (2012) of 29 June 2012, the Security Council requested the International Criminal Tribunal for Rwanda to report on the projected schedule for transferring its remaining functions to the Mechanism. Further, the Council called on relevant United Nations units to intensify cooperation so as to find a flexible approach in addressing the staffing concerns expressed by the President and Prosecutor of the Tribunal at their briefing on 7 June 2012. At the same time, the Council called upon the Tribunal to focus on its core functions, and urged all States to intensify their cooperation in apprehending remaining fugitives. It also called on States in a position to do so to help the Tribunal to relocate acquitted persons as well as those who had completed their sentences.

21. By resolution 2080 (2012) of 12 December 2012, the Council requested updates on the transition of the functions of the International Criminal Tribunal for Rwanda to the Mechanism, with a view to the completion of the Tribunal's work by the end of 2014. It urged all States to provide all needed assistance in that regard, particularly in relation to the arrest of remaining fugitives.

22. By the same resolution, the Council recognized concerns expressed that the current trial and appeal schedules would extend beyond the closure date, 31 December 2014, and requested a comprehensive plan on the Tribunal's completion strategy, closure and transition to the Mechanism, as well as updated schedules for individual cases. It also underlined that States should cooperate fully with the Tribunal, including by providing information to it and to the Mechanism.

VI. Mandates of judges of the Tribunals

23. in order to facilitate the completion strategies of the two Tribunals, the Working Group considered various requests by the Presidents of the Tribunals, including the extension of the judges' terms of office. Following negotiations and agreement reached among its members, the Working Group made recommendations to the Security Council for the adoption of appropriate resolutions. As a result, the Security Council adopted resolutions 2054 (2012), 2080 (2012) and 2081 (2012).

24. By resolution 2054 (2012) of 29 June 2012, the Security Council authorized Judge William H. Sekule (United Republic of Tanzania), Judge Solomy Balungi Bossa (Uganda) and Judge Mparany Mamy Richard Rajohnson (Madagascar) of the International Criminal Tribunal for Rwanda to serve beyond the expiry of their terms of office in order to complete their cases. The Council also decided to extend until 31 December 2014 the term of office of the President of the Tribunal, Judge Vagn Joensen (Denmark). This decision will be reviewed in June 2013.

25. By resolution 2080 (2012) of 12 December 2012 the Security Council decided to extend the term of office of five judges of the Appeals Chamber of the International Criminal Tribunal for Rwanda until 31 December 2014, or completion of the cases to which they have been assigned, if sooner. The judges are: Mehmet Güney (Turkey), Khalida Rachid Khan (Pakistan), Arlette Ramaroson (Madagascar), Bakhtiyar Tuzmukhamedov (Russian Federation) and Andrésia Vaz (Senegal).

26. By resolution 2081 (2012) of 17 December 2012 the Security Council, by 14 votes to none, with 1 abstention, extended the terms of Appeals Chamber Judges Carmel Agius (Malta), Liu Daqun (China), Theodor Meron (United States of America), Fausto Pocar (Italy) and Patrick Robinson (Jamaica) until 31 December 2013. It also extended the terms of office of permanent Trial Chambers Judges Jean-Claude Antonetti (France), Guy Delvoie (Belgium), Burton Hall (Bahamas), Christoph Flugge (Germany), O-Gon Kwon (Republic of Korea), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom) and Alphons Orie (Netherlands) until 31 December 2013.

27. The Council likewise extended the terms of ad litem Trial Chamber Judges Elizabeth Gwaunza (Zimbabwe), Michèle Picard (France), Árpád Prandler (Hungary) and Stefan Trechsel (Switzerland) until 1 June 2013, and those of Melville Baird (Trinidad and Tobago), Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), and Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo) until 31 December 2013.

VII. Conclusion

28. In view of Guatemala's unwavering commitment to the rule of law, we were very pleased to chair the Working Group in 2012 and to facilitate agreements for the adoption of resolutions 2038 (2012), 2054 (2012), 2080 (2012) and 2081 (2012).

29. The Working Group will have to continue to perform important tasks, such as supporting the efforts of the two Tribunals to implement their completion strategies, assisting the setting up and commencement of functioning of the International Tribunal for the Former Yugoslavia branch of the Mechanism and ensuring a smooth transition from the Tribunals to the Mechanism. The resolution of challenges such as staff retention is essential for the timely completion of the work of the Tribunals. Cooperation with both Tribunals should be intensified, in particular for the arrest and surrender of the remaining fugitives. Increased efforts are also required towards the relocation of acquitted persons and convicted persons who have completed serving their sentences.

30. In order to keep the momentum that has been generated, it would seem advisable that the Working Group continue holding regular meetings and briefings, maintaining a regular dialogue with the Tribunals and close contacts with the affected countries and host countries of the Tribunals and the Mechanism, as well as continuing the close cooperation with the Office of Legal Affairs. The Chair and the Working Group have greatly benefited from the support and input provided by the Office of Legal Affairs and will continue to depend on their expertise in the future.

31. In conclusion, we would like to thank all members of the Working Group for their important contributions. Our appreciation also goes to the previous Chair of the Working Group, Portugal, for its guidance and support to our Chairmanship. Our sincere thanks also go to the Secretariat, the Office of Legal Affairs and the Security Council Affairs Division, for the invaluable support in 2012.